

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 367 CORRECTED**

Introduced by Janssen, 15; Cornett, 45; Dierks, 40; Dubas, 34

Read first time January 12, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2701.02, Reissue Revised Statutes of Nebraska, and  
3 sections 60-3,187, 77-2701.10, 77-2701.16, 77-2701.34,  
4 77-2703, 77-2703.01, and 77-2704.55, Revised Statutes  
5 Cumulative Supplement, 2006; to change motor vehicle  
6 tax calculations and the sales tax rate; to eliminate  
7 taxation of construction services; to harmonize  
8 provisions; to provide an operative date; to repeal  
9 the original sections; and to outright repeal section  
10 77-2701.45, Revised Statutes Cumulative Supplement, 2006.  
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-3,187, Revised Statutes Cumulative  
2 Supplement 2006, is amended to read:

3 60-3,187 (1) The motor vehicle tax schedules are set out  
4 in this section.

5 (2) The motor vehicle tax shall be calculated by  
6 multiplying the base tax times the fraction which corresponds  
7 to the age category of the vehicle as shown in the following table:

| 8 YEAR                    | FRACTION |
|---------------------------|----------|
| 9 First                   | 1.00     |
| 10 Second                 | 0.90     |
| 11 Third                  | 0.80     |
| 12 Fourth                 | 0.70     |
| 13 Fifth                  | 0.60     |
| 14 Sixth                  | 0.51     |
| 15 Seventh                | 0.42     |
| 16 Eighth                 | 0.33     |
| 17 Ninth                  | 0.24     |
| 18 Tenth and Eleventh     | 0.15     |
| 19 Twelfth and Thirteenth | 0.07     |
| 20 Fourteenth and older   | 0.00     |

21 (3) The base tax for registrations due on or before  
22 December 31, 2007, shall be:

23 (a) Automobiles and motorcycles - An amount determined  
24 using the following table:

|                   |          |
|-------------------|----------|
| 25 Value when new | Base tax |
|-------------------|----------|

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|    |                      |       |
|----|----------------------|-------|
| 1  | Up to \$3,999        | \$ 25 |
| 2  | \$4,000 to \$5,999   | 35    |
| 3  | \$6,000 to \$7,999   | 45    |
| 4  | \$8,000 to \$9,999   | 60    |
| 5  | \$10,000 to \$11,999 | 100   |
| 6  | \$12,000 to \$13,999 | 140   |
| 7  | \$14,000 to \$15,999 | 180   |
| 8  | \$16,000 to \$17,999 | 220   |
| 9  | \$18,000 to \$19,999 | 260   |
| 10 | \$20,000 to \$21,999 | 300   |
| 11 | \$22,000 to \$23,999 | 340   |
| 12 | \$24,000 to \$25,999 | 380   |
| 13 | \$26,000 to \$27,999 | 420   |
| 14 | \$28,000 to \$29,999 | 460   |
| 15 | \$30,000 to \$31,999 | 500   |
| 16 | \$32,000 to \$33,999 | 540   |
| 17 | \$34,000 to \$35,999 | 580   |
| 18 | \$36,000 to \$37,999 | 620   |
| 19 | \$38,000 to \$39,999 | 660   |
| 20 | \$40,000 to \$41,999 | 700   |
| 21 | \$42,000 to \$43,999 | 740   |
| 22 | \$44,000 to \$45,999 | 780   |
| 23 | \$46,000 to \$47,999 | 820   |
| 24 | \$48,000 to \$49,999 | 860   |
| 25 | \$50,000 to \$51,999 | 900   |
| 26 | \$52,000 to \$53,999 | 940   |
| 27 | \$54,000 to \$55,999 | 980   |

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|    |   |       |
|----|---|-------|
| 1  | \$56,000 to \$57,999                                      | 1,020 |
| 2  | \$58,000 to \$59,999                                      | 1,060 |
| 3  | \$60,000 to \$61,999                                      | 1,100 |
| 4  | \$62,000 to \$63,999                                      | 1,140 |
| 5  | \$64,000 to \$65,999                                      | 1,180 |
| 6  | \$66,000 to \$67,999                                      | 1,220 |
| 7  | \$68,000 to \$69,999                                      | 1,260 |
| 8  | \$70,000 to \$71,999                                      | 1,300 |
| 9  | \$72,000 to \$73,999                                      | 1,340 |
| 10 | \$74,000 to \$75,999                                      | 1,380 |
| 11 | \$76,000 to \$77,999                                      | 1,420 |
| 12 | \$78,000 to \$79,999                                      | 1,460 |
| 13 | \$80,000 to \$81,999                                      | 1,500 |
| 14 | \$82,000 to \$83,999                                      | 1,540 |
| 15 | \$84,000 to \$85,999                                      | 1,580 |
| 16 | \$86,000 to \$87,999                                      | 1,620 |
| 17 | \$88,000 to \$89,999                                      | 1,660 |
| 18 | \$90,000 to \$91,999                                      | 1,700 |
| 19 | \$92,000 to \$93,999                                      | 1,740 |
| 20 | \$94,000 to \$95,999                                      | 1,780 |
| 21 | \$96,000 to \$97,999                                      | 1,820 |
| 22 | \$98,000 to \$99,999                                      | 1,860 |
| 23 | \$100,000 and over  | 1,900 |
| 24 | (b) Assembled automobiles - \$60                          |       |
| 25 | (c) Assembled motorcycles - \$25                          |       |
| 26 | (d) Cabin trailers, up to one thousand pounds - \$10      |       |
| 27 | (e) Cabin trailers, one thousand pounds and over and less |       |

- 1 than two thousand pounds - \$25
- 2 (f) Cabin trailers, two thousand pounds and over - \$40
- 3 (g) Recreational vehicles, less than eight thousand
- 4 pounds - \$160
- 5 (h) Recreational vehicles, eight thousand pounds and over
- 6 and less than twelve thousand pounds - \$410
- 7 (i) Recreational vehicles, twelve thousand pounds and
- 8 over - \$860
- 9 (j) Assembled recreational vehicles and buses shall
- 10 follow the schedules for body type and registered weight
- 11 (k) Trucks - Over seven tons and less than ten tons -
- 12 \$360
- 13 (l) Trucks - Ten tons and over and less than thirteen
- 14 tons - \$560
- 15 (m) Trucks - Thirteen tons and over and less than sixteen
- 16 tons - \$760
- 17 (n) Trucks - Sixteen tons and over and less than
- 18 twenty-five tons - \$960
- 19 (o) Trucks - Twenty-five tons and over - \$1,160
- 20 (p) Buses - \$360
- 21 (q) Trailers other than semitrailers - \$10
- 22 (r) Semitrailers - \$110
- 23 (4) The base tax for registrations due on or after
- 24 January 1, 2008, shall be:
- 25 (a) Automobiles and motorcycles - An amount determined

1 using the following table:

| 2  | <u>Value when new</u>       | <u>Base tax</u> |
|----|-----------------------------|-----------------|
| 3  | <u>Up to \$3,999</u>        | <u>\$ 16.50</u> |
| 4  | <u>\$4,000 to \$5,999</u>   | <u>23.50</u>    |
| 5  | <u>\$6,000 to \$7,999</u>   | <u>30.00</u>    |
| 6  | <u>\$8,000 to \$9,999</u>   | <u>40.00</u>    |
| 7  | <u>\$10,000 to \$11,999</u> | <u>66.00</u>    |
| 8  | <u>\$12,000 to \$13,999</u> | <u>93.50</u>    |
| 9  | <u>\$14,000 to \$15,999</u> | <u>120.00</u>   |
| 10 | <u>\$16,000 to \$17,999</u> | <u>146.50</u>   |
| 11 | <u>\$18,000 to \$19,999</u> | <u>173.00</u>   |
| 12 | <u>\$20,000 to \$21,999</u> | <u>200.00</u>   |
| 13 | <u>\$22,000 to \$23,999</u> | <u>226.50</u>   |
| 14 | <u>\$24,000 to \$25,999</u> | <u>253.00</u>   |
| 15 | <u>\$26,000 to \$27,999</u> | <u>280.00</u>   |
| 16 | <u>\$28,000 to \$29,999</u> | <u>306.50</u>   |
| 17 | <u>\$30,000 to \$31,999</u> | <u>333.50</u>   |
| 18 | <u>\$32,000 to \$33,999</u> | <u>360.00</u>   |
| 19 | <u>\$34,000 to \$35,999</u> | <u>386.50</u>   |
| 20 | <u>\$36,000 to \$37,999</u> | <u>413.50</u>   |
| 21 | <u>\$38,000 to \$39,999</u> | <u>440.00</u>   |
| 22 | <u>\$40,000 to \$41,999</u> | <u>466.50</u>   |
| 23 | <u>\$42,000 to \$43,999</u> | <u>493.00</u>   |
| 24 | <u>\$44,000 to \$45,999</u> | <u>520.00</u>   |
| 25 | <u>\$46,000 to \$47,999</u> | <u>546.50</u>   |
| 26 | <u>\$48,000 to \$49,999</u> | <u>573.50</u>   |
| 27 | <u>\$50,000 to \$51,999</u> | <u>600.00</u>   |

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|    |  |                 |
|----|--|-----------------|
| 1  | <u>\$52,000 to \$53,999</u>                | <u>626.50</u>   |
| 2  | <u>\$54,000 to \$55,999</u>                | <u>653.50</u>   |
| 3  | <u>\$56,000 to \$57,999</u>                | <u>680.00</u>   |
| 4  | <u>\$58,000 to \$59,999</u>                | <u>706.50</u>   |
| 5  | <u>\$60,000 to \$61,999</u>                | <u>733.50</u>   |
| 6  | <u>\$62,000 to \$63,999</u>                | <u>760.00</u>   |
| 7  | <u>\$64,000 to \$65,999</u>                | <u>786.50</u>   |
| 8  | <u>\$66,000 to \$67,999</u>                | <u>813.50</u>   |
| 9  | <u>\$68,000 to \$69,999</u>                | <u>840.00</u>   |
| 10 | <u>\$70,000 to \$71,999</u>                | <u>866.50</u>   |
| 11 | <u>\$72,000 to \$73,999</u>                | <u>893.50</u>   |
| 12 | <u>\$74,000 to \$75,999</u>                | <u>920.00</u>   |
| 13 | <u>\$76,000 to \$77,999</u>                | <u>946.50</u>   |
| 14 | <u>\$78,000 to \$79,999</u>                | <u>973.50</u>   |
| 15 | <u>\$80,000 to \$81,999</u>                | <u>1,000.00</u> |
| 16 | <u>\$82,000 to \$83,999</u>                | <u>1,026.50</u> |
| 17 | <u>\$84,000 to \$85,999</u>                | <u>1,053.50</u> |
| 18 | <u>\$86,000 to \$87,999</u>                | <u>1,080.00</u> |
| 19 | <u>\$88,000 to \$89,999</u>                | <u>1,106.50</u> |
| 20 | <u>\$90,000 to \$91,999</u>                | <u>1,133.50</u> |
| 21 | <u>\$92,000 to \$93,999</u>                | <u>1,160.00</u> |
| 22 | <u>\$94,000 to \$95,999</u>                | <u>1,186.50</u> |
| 23 | <u>\$96,000 to \$97,999</u>                | <u>1,213.50</u> |
| 24 | <u>\$98,000 to \$99,999</u>                | <u>1,240.00</u> |
| 25 | <u>\$100,000 and over</u>                  | <u>1,266.50</u> |
| 26 | <u>(b) Assembled automobiles - \$40</u>    |                 |
| 27 | <u>(c) Assembled motorcycles - \$16.50</u> |                 |

- 1           (d) Cabin trailers, up to one thousand pounds - \$6.50
- 2           (e) Cabin trailers, one thousand pounds and over and less  
3 than two thousand pounds - \$16.50
- 4           (f) Cabin trailers, two thousand pounds and over - \$26.50
- 5           (g) Recreational vehicles, less than eight thousand  
6 pounds - \$160
- 7           (h) Recreational vehicles, eight thousand pounds and over  
8 and less than twelve thousand pounds - \$410
- 9           (i) Recreational vehicles, twelve thousand pounds and  
10 over - \$860
- 11           (j) Assembled recreational vehicles and buses shall  
12 follow the schedules for body type and registered weight
- 13           (k) Trucks - Over seven tons and less than ten tons -  
14 \$360
- 15           (l) Trucks - Ten tons and over and less than thirteen  
16 tons - \$560
- 17           (m) Trucks - Thirteen tons and over and less than sixteen  
18 tons - \$760
- 19           (n) Trucks - Sixteen tons and over and less than  
20 twenty-five tons - \$960
- 21           (o) Trucks - Twenty-five tons and over - \$1,160
- 22           (p) Buses - \$360
- 23           (q) Trailers other than semitrailers - \$10
- 24           (r) Semitrailers - \$110
- 25           ~~(4)~~ (5) For purposes of subsection (3) subsections (3)

1 and (4) of this section, truck means all trucks and combinations  
2 of trucks except those trucks, trailers, or combinations thereof  
3 registered under section 60-3,198, and the tax is based on the  
4 gross vehicle weight rating as reported by the manufacturer.

5 ~~(5)~~ (6) Current model year vehicles are designated as  
6 first-year motor vehicles for purposes of the schedules.

7 ~~(6)~~ (7) When a motor vehicle is registered which is newer  
8 than the current model year by the manufacturer's designation, the  
9 motor vehicle is subject to the initial motor vehicle tax in the  
10 first registration period and ninety-five percent of the initial  
11 motor vehicle tax in the second registration period.

12 ~~(7)~~ (8) Assembled cabin trailers, assembled recreational  
13 vehicles, and assembled buses shall be designated as sixth-year  
14 motor vehicles in their first year of registration for purposes of  
15 the schedules.

16 ~~(8)~~ (9) When a motor vehicle is registered which is  
17 required to have a title branded as previous salvage pursuant  
18 to section 60-175, the motor vehicle tax shall be reduced by  
19 twenty-five percent.

20 Sec. 2. Section 77-2701.02, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 77-2701.02 Pursuant to section 77-2715.01:

23 (1) Until July 1, 1998, the rate of the sales tax levied  
24 pursuant to section 77-2703 shall be five percent;

25 (2) Commencing July 1, 1998, and until July 1, 1999, the

1 rate of the sales tax levied pursuant to section 77-2703 shall be  
2 four and one-half percent;

3 (3) Commencing July 1, 1999, and until the start of the  
4 first calendar quarter after July 20, 2002, the rate of the sales  
5 tax levied pursuant to section 77-2703 shall be five percent; ~~and~~

6 (4) Commencing on the start of the first calendar quarter  
7 after July 20, 2002, and until October 1, 2007, the rate of the  
8 sales tax levied pursuant to section 77-2703 shall be five and  
9 one-half percent; and -

10 (5) Commencing October 1, 2007, the rate of the sales tax  
11 levied pursuant to section 77-2703 shall be five percent.

12 Sec. 3. Section 77-2701.10, Revised Statutes Cumulative  
13 Supplement, 2006, is amended to read:

14 77-2701.10 Contractor or repairperson means any person  
15 who performs any repair services upon property annexed to, or  
16 who annexes building materials to, real estate, including leased  
17 property, and who, as a necessary and incidental part of performing  
18 such services, annexes building materials to the real estate being  
19 so repaired or annexed or arranges for such annexation. Contractor  
20 or repairperson does not include any person who incorporates  
21 live plants into real estate except when such incorporation is  
22 incidental to the transfer of an improvement upon real estate or  
23 the real estate. The contractor or repairperson not electing to  
24 be taxed as a retailer is considered to be the consumer of such  
25 building materials furnished by him or her and annexed to the real

1 estate being so repaired or annexed for all the purposes of the  
2 Nebraska Revenue Act of 1967. The contractor or repairperson:

3 (1) Shall be permitted to make an election that he or she  
4 will be taxed as a retailer in which case he or she shall not be  
5 considered the final consumer of building materials annexed to real  
6 estate;

7 (2) Shall be permitted to make an election that he or she  
8 will be taxed as the consumer of building materials annexed to real  
9 estate, will pay the sales tax or remit the use tax at the time of  
10 purchase, and will maintain a tax-paid inventory; or

11 (3) Shall be permitted to make an election that he or  
12 she will be taxed as the consumer of building materials annexed  
13 to real estate and may issue a resale certificate when purchasing  
14 building materials that will be annexed to real estate. Such person  
15 shall then remit the appropriate use tax on any building materials  
16 when withdrawn from inventory for the purpose of being annexed to  
17 real estate at the rate in effect at the time and place of the  
18 withdrawal from inventory.

19 ~~The contractor shall collect and remit the tax on his or~~  
20 ~~her gross receipts for labor in performing construction services as~~  
21 ~~payments are received except as provided in section 77-2704.55.~~

22 The provisions of this section shall not excuse any  
23 person from the obligation to collect sales tax on retail sales of  
24 property not annexed to real estate or from the obligation to pay  
25 the sales tax or remit the use tax on tools, services, and other

1 materials consumed that are not annexed to real estate.

2           The Department of Revenue shall not prescribe any  
3 requirements of Nebraska sales revenue, percentage or otherwise,  
4 restricting any person's election. Any change in an election shall  
5 require prior approval by the Tax Commissioner.

6           Any change in the election shall, if filed on or prior to  
7 the fifteenth of the month, become effective at the beginning of  
8 the following month or, if filed after the fifteenth of the month,  
9 become effective on the first day of the next succeeding month. Any  
10 person who changes his or her election and becomes a contractor  
11 or repairperson shall pay the tax on all building materials in  
12 inventory which may be annexed to real estate at the time of making  
13 the change in election except when such contractor or repairperson  
14 elects to purchase inventory with a resale certificate. Any person  
15 who changes his or her election and becomes a retailer shall not be  
16 entitled to a refund but shall receive a credit for the tax paid on  
17 building materials in inventory at the time the building materials  
18 are sold. The credit shall be applied against the tax collected on  
19 sales of such building materials.

20           Any contractor or repairperson who has not completed and  
21 filed an election as required in this section within three months  
22 after beginning to operate as a contractor or repairperson shall be  
23 considered a retailer for all periods until an election has been  
24 made.

25           Sec. 4. Section 77-2701.16, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2           77-2701.16 (1) Gross receipts shall mean the total amount  
3 of the sale or lease or rental price, as the case may be, of  
4 the retail sales of retailers valued in money whether received in  
5 money or otherwise, without any deduction on account of any of the  
6 following:

7           (a) The cost of property sold. In accordance with rules  
8 and regulations adopted and promulgated by the Tax Commissioner, a  
9 deduction may be taken if the retailer has purchased property for  
10 some purpose other than resale, has reimbursed his or her vendor  
11 for tax which the vendor is required to pay to the state or has  
12 paid the use tax with respect to the property, and has resold  
13 the property prior to making any use of the property other than  
14 retention, demonstration, or display while holding it for sale in  
15 the regular course of business. If such a deduction is taken by the  
16 retailer, no refund or credit will be allowed to his or her vendor  
17 with respect to the sale of the property;

18           (b) The cost of the materials used, labor or service  
19 costs, interest paid, losses, or any other expense;

20           (c) The cost of transportation of the property;

21           (d) The amount of any excise or property tax levied  
22 against the property except as otherwise provided in the Nebraska  
23 Revenue Act of 1967; or

24           (e) The amount charged for warranties, guarantees, or  
25 maintenance agreements.

1           (2) Gross receipts of every person engaged as a public  
2 utility specified in this subsection or as a community antenna  
3 television service operator or any person involved in connecting  
4 and installing services defined in subdivision (2)(a), (b), or (d)  
5 of this section shall mean:

6           (a) In the furnishing of telephone communication service,  
7 other than mobile telecommunications service as described in  
8 section 77-2706.02, the gross income received from furnishing local  
9 exchange telephone service and intrastate message toll telephone  
10 service. In the furnishing of mobile telecommunications service  
11 as described in section 77-2706.02, the gross income received  
12 from furnishing mobile telecommunications service that originates  
13 and terminates in the same state to a customer with a place  
14 of primary use in Nebraska. Gross receipts shall not mean (i)  
15 the gross income, including division of revenue, settlements, or  
16 carrier access charges received on or after January 1, 1984, from  
17 the sale of a telephone communication service to a communication  
18 service provider for purposes of furnishing telephone communication  
19 service or (ii) the gross income attributable to services rendered  
20 using a prepaid telephone calling arrangement. For purposes of  
21 this subdivision, a prepaid telephone calling arrangement shall  
22 mean the right to exclusively purchase telecommunications service  
23 that is paid for in advance that enables the origination of calls  
24 using an access number or authorization code, whether manually or  
25 electronically dialed;

1           (b) In the furnishing of telegraph service, the gross  
2 income received from the furnishing of intrastate telegraph  
3 services;

4           (c) In the furnishing of gas, electricity, sewer, and  
5 water service except water used for irrigation of agricultural  
6 lands and manufacturing purposes, the gross income received from  
7 the furnishing of such services upon billings or statements  
8 rendered to consumers for such utility services; and

9           (d) In the furnishing of community antenna television  
10 service, the gross income received from the furnishing of such  
11 community antenna television service as regulated under sections  
12 18-2201 to 18-2205 or 23-383 to 23-388.

13           Gross receipts shall also mean gross income received from  
14 the provision, installation, construction, servicing, or removal of  
15 property used in conjunction with the furnishing, installing, or  
16 connecting of any public utility services specified in subdivision  
17 (2)(a) or (b) of this section or community antenna television  
18 service specified in subdivision (2)(d) of this section. Gross  
19 receipts shall not mean gross income received from telephone  
20 directory advertising.

21           (3) Gross receipts of every person engaged in selling,  
22 leasing, or otherwise providing intellectual or entertainment  
23 property shall mean:

24           (a) In the furnishing of computer software, the gross  
25 income received, including the charges for coding, punching, or

1 otherwise producing computer software and the charges for the  
2 tapes, disks, punched cards, or other properties furnished by the  
3 seller; and

4 (b) In the furnishing of videotapes, movie film,  
5 satellite programming, satellite programming service, and satellite  
6 television signal descrambling or decoding devices, the gross  
7 income received from the license, franchise, or other method  
8 establishing the charge except the gross income received from  
9 videotape and film rentals, satellite programming, and satellite  
10 programming service when the sales tax or the admission tax is  
11 charged under the Nebraska Revenue Act of 1967 and except as  
12 provided in section 77-2704.39.

13 (4) Gross receipts for providing a service shall mean:

14 (a) The gross income received for building cleaning and  
15 maintenance, pest control, and security;

16 (b) The gross income received for motor vehicle washing,  
17 waxing, towing, and painting;

18 (c) The gross income received for computer software  
19 training;

20 (d) The gross income received for installing and applying  
21 tangible personal property if the sale of the property is subject  
22 to tax;

23 (e) The gross income received for labor by a contractor  
24 except as provided in section 77-2704.55;

25 (f) The gross income received for services of

1 recreational vehicle parks;

2 (g) The gross income received for labor for repair or  
3 maintenance services performed with regard to tangible personal  
4 property the sale of which would be subject to sales and use  
5 taxes, excluding motor vehicles, except as otherwise provided in  
6 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

7 (h) The gross income received for animal specialty  
8 services except (i) veterinary services and (ii) specialty services  
9 performed on livestock as defined in section 54-183; and

10 (i) The gross income received for detective services.

11 (5) Gross receipts shall not include any of the  
12 following:

13 (a) Cash discounts allowed and taken on sales;

14 (b) The amount of any rebate granted by a motor vehicle  
15 or motorboat manufacturer or dealer at the time of sale of the  
16 motor vehicle or motorboat, which rebate functions as a discount  
17 from the sales price of the motor vehicle or motorboat;

18 (c) Sales price of property or services returned or  
19 rejected by customers when the full sales price is refunded either  
20 in cash or credit;

21 (d) The amount charged for finance charges, carrying  
22 charges, service charges, or interest from credit extended on sales  
23 of property or services under contracts providing for deferred  
24 payments of the purchase price if such charges are not used as a  
25 means of avoiding imposition of the tax upon the actual sales price

1 of the property or services;

2 (e) The value of property taken by a seller in trade as  
3 all or a part of the consideration for a sale of property of any  
4 kind or nature;

5 (f) The value of a motor vehicle or motorboat taken by  
6 any person in trade as all or a part of the consideration for a  
7 sale of another motor vehicle or motorboat;

8 (g) Receipts from conditional sale contracts, installment  
9 sale contracts, rentals, and leases executed in writing prior to  
10 June 1, 1967, and with delivery of the property prior to June  
11 1, 1967, if such conditional sale contracts, installment sale  
12 contracts, rentals, or leases are for a fixed price and are not  
13 subject to negotiation or alteration; or

14 (h) Except as provided in subsection (2) of this section,  
15 until October 1, 2002, the amount charged for labor or services  
16 rendered in installing or applying the property sold if such amount  
17 is separately stated and such separate statement is not used as a  
18 means of avoiding imposition of the tax upon the actual sales price  
19 of the property.

20 (6) Subsections (1) through (6) of this section terminate  
21 on January 1, 2004.

22 (7) Gross receipts means the total amount of the sale or  
23 lease or rental price, as the case may be, of the retail sales of  
24 retailers.

25 (8) Gross receipts of every person engaged as a public

1 utility specified in this subsection or as a community antenna  
2 television service operator or any person involved in connecting  
3 and installing services defined in subdivision (8)(a), (b), or (d)  
4 of this section means:

5 (a)(i) In the furnishing of telephone communication  
6 service, other than mobile telecommunications service as described  
7 in section 77-2703.04, the gross income received from furnishing  
8 local exchange telephone service and intrastate message toll  
9 telephone service; and

10 (ii) In the furnishing of mobile telecommunications  
11 service as described in section 77-2703.04, the gross income  
12 received from furnishing mobile telecommunications service that  
13 originates and terminates in the same state to a customer with a  
14 place of primary use in Nebraska;

15 (b) In the furnishing of telegraph service, the gross  
16 income received from the furnishing of intrastate telegraph  
17 services;

18 (c) In the furnishing of gas, electricity, sewer, and  
19 water service, the gross income received from the furnishing of  
20 such services upon billings or statements rendered to consumers for  
21 such utility services;

22 (d) In the furnishing of community antenna television  
23 service, the gross income received from the furnishing of such  
24 community antenna television service as regulated under sections  
25 18-2201 to 18-2205 or 23-383 to 23-388; and

1           (e) The gross income received from the provision,  
2 installation, construction, servicing, or removal of property used  
3 in conjunction with the furnishing, installing, or connecting of  
4 any public utility services specified in subdivision (8) (a) or (b)  
5 of this section or community antenna television service specified  
6 in subdivision (8) (d) of this section, ~~which shall be considered~~  
7 ~~construction services beginning October 1, 2003.~~ Except when acting  
8 as a subcontractor for a public utility, this subdivision does not  
9 apply to the gross income received by a contractor electing to be  
10 treated as a consumer of building materials under subdivision (2)  
11 or (3) of section 77-2701.10 for any such services performed on the  
12 customer's side of the utility demarcation point, ~~prior to October~~  
13 ~~1, 2003.~~

14           (9) Gross receipts of every person engaged in selling,  
15 leasing, or otherwise providing intellectual or entertainment  
16 property means:

17           (a) In the furnishing of computer software, the gross  
18 income received, including the charges for coding, punching, or  
19 otherwise producing any computer software and the charges for the  
20 tapes, disks, punched cards, or other properties furnished by the  
21 seller; and

22           (b) In the furnishing of videotapes, movie film,  
23 satellite programming, satellite programming service, and satellite  
24 television signal descrambling or decoding devices, the gross  
25 income received from the license, franchise, or other method

1 establishing the charge.

2 (10) Gross receipts for providing a service means:

3 (a) The gross income received for building cleaning and  
4 maintenance, pest control, and security;

5 (b) The gross income received for motor vehicle washing,  
6 waxing, towing, and painting;

7 (c) The gross income received for computer software  
8 training;

9 (d) The gross income received for installing and applying  
10 tangible personal property if the sale of the property is subject  
11 to tax;

12 ~~(e) The gross receipts received for labor by a contractor~~  
13 ~~electing to be treated as a consumer of building materials under~~  
14 ~~subdivision (2) or (3) of section 77-2701.10 except as provided~~  
15 ~~in section 77-2704.55. For purposes of this subdivision, the gross~~  
16 ~~receipts received for labor shall be sixty percent of the sales~~  
17 ~~price for building materials and construction services less an~~  
18 ~~allowance for sales tax paid on building materials. The allowance~~  
19 ~~for sales tax paid on building materials shall equal the sales tax~~  
20 ~~rate in effect at the time payment is received at the location of~~  
21 ~~the project times forty percent of the sales price for building~~  
22 ~~materials and construction services;~~

23 ~~(f)~~ (e) The gross income received for services of  
24 recreational vehicle parks;

25 ~~(g)~~ (f) The gross income received for labor for repair

1 or maintenance services performed with regard to tangible personal  
2 property the sale of which would be subject to sales and use taxes,  
3 excluding motor vehicles, except as otherwise provided in section  
4 77-2704.26 or 77-2704.50;

5 ~~(h)~~ (g) The gross income received for animal specialty  
6 services except (i) veterinary services and (ii) specialty services  
7 performed on livestock as defined in section 54-183; and

8 ~~(i)~~ (h) The gross income received for detective services.

9 (11) Gross receipts includes the sale of admissions which  
10 means the right or privilege to have access to or to use a place  
11 or location. An admission includes a membership that allows access  
12 to or use of a place or location, but which membership does not  
13 include the right to hold office, vote, or change the policies of  
14 the organization. When an admission to an activity or a membership  
15 constituting an admission pursuant to this subsection is combined  
16 with the solicitation of a contribution, the portion or the amount  
17 charged representing the fair market price of the admission shall  
18 be considered a retail sale subject to the tax imposed by section  
19 77-2703. The organization conducting the activity shall determine  
20 the amount properly attributable to the purchase of the privilege,  
21 benefit, or other consideration in advance, and such amount shall  
22 be clearly indicated on any ticket, receipt, or other evidence  
23 issued in connection with the payment.

24 (12) Gross receipts includes the sale of live plants  
25 incorporated into real estate except when such incorporation is

1 incidental to the transfer of an improvement upon real estate or  
2 the real estate.

3 (13) Gross receipts includes the sale of any building  
4 materials annexed to real estate ~~and any construction services~~ by a  
5 person electing to be taxed as a retailer pursuant to subdivision  
6 (1) of section 77-2701.10.

7 (14) Gross receipts includes the sale of prepaid  
8 telephone calling arrangements and the recharge of prepaid  
9 telephone calling arrangements. If the sale or recharge of a  
10 prepaid telephone calling arrangement does not take place at  
11 the vendor's place of business, the sale or recharge shall be  
12 conclusively determined to take place at the customer's shipping  
13 address or, if there is no item shipped, at the customer's  
14 billing address. For purposes of this subsection, a prepaid  
15 telephone calling arrangement means the right to exclusively  
16 purchase telecommunications services that are paid for in advance  
17 that enables the origination of calls using an access number or  
18 authorization code, whether manually or electronically dialed.

19 (15) Gross receipts does not include:

20 (a) The amount of any rebate granted by a motor vehicle  
21 or motorboat manufacturer or dealer at the time of sale of the  
22 motor vehicle or motorboat, which rebate functions as a discount  
23 from the sales price of the motor vehicle or motorboat; or

24 (b) The price of property or services returned or  
25 rejected by customers when the full sales price is refunded

1 either in cash or credit.

2 (16) Subsections (7) through (15) of this section become  
3 operative on January 1, 2004.

4 (17) The Tax Commissioner shall hold a hearing on rules  
5 and regulations to carry out the changes made to this section by  
6 Laws 2003, LB 759. It is the intent of the Legislature that the Tax  
7 Commissioner adopt and promulgate rules and regulations to carry  
8 out such changes.

9 Sec. 5. Section 77-2701.34, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11 77-2701.34 Sale for resale means a sale of property or  
12 provision of a service to any purchaser who is purchasing such  
13 property or service for the purpose of reselling it in the normal  
14 course of his or her business, either in the form or condition in  
15 which it is purchased or as an attachment to or integral part of  
16 other property or service. A sale for resale includes a sale of  
17 building materials to a contractor or repairperson electing to be  
18 taxed as a retailer under subdivision (1) of section 77-2701.10, a  
19 sale of building materials to a contractor or repairperson being  
20 taxed as the consumer of building materials and electing a tax-free  
21 inventory under subdivision (3) of section 77-2701.10, or a sale  
22 of property to a purchaser for the sole purpose of that purchaser  
23 renting or leasing such property to another person, with rent or  
24 lease payments set at a fair market value, or film rentals for  
25 use in a place where an admission is charged that is subject to

1 tax under the Nebraska Revenue Act of 1967 but not if incidental  
2 to the renting or leasing of real estate. A sale for resale also  
3 includes the sale by a contractor of construction services to  
4 another contractor.

5 Sec. 6. Section 77-2703, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7 77-2703 (1) There is hereby imposed a tax at the rate  
8 provided in section 77-2701.02 upon the gross receipts from all  
9 sales of tangible personal property sold at retail in this state,  
10 the gross receipts of every person engaged as a public utility,  
11 as a community antenna television service operator or any person  
12 involved in the connecting and installing of the services defined  
13 in subdivision ~~(2)(a)~~, ~~(b)~~, or ~~(d)~~ of section 77-2701.16 until  
14 January 1, 2004, and the services defined in subdivision (8)(a),  
15 (b), (d), or (e) of section 77-2701.16, beginning on January 1,  
16 2004, or as a retailer of intellectual or entertainment properties  
17 referred to in subsection ~~(3)~~ of section 77-2701.16 until January  
18 1, 2004, and subsection (9) of section 77-2701.16, beginning on  
19 January 1, 2004, the gross receipts from the sale of admissions  
20 in this state, the gross receipts from the sale of warranties,  
21 guarantees, service agreements, or maintenance agreements when the  
22 items covered are subject to tax under this section, and the gross  
23 receipts from the provision of services defined in subsection ~~(4)~~  
24 of section 77-2701.16 until January 1, 2004, and services defined  
25 in subsection (10) of section 77-2701.16, beginning on January

1 ~~1, 2004.~~ Except as provided in section 77-2701.03, when there is  
2 a sale, the tax shall be imposed at the rate in effect at the  
3 time the gross receipts are realized under the accounting basis  
4 used by the retailer to maintain his or her books and records,  
5 ~~or for a contractor when the payment or payments are received~~  
6 ~~for construction services.~~ For purposes of this subsection until  
7 January 1, 2004, the provision of services shall be deemed to  
8 be in this state for services provided to real estate if the  
9 real estate is located in this state; for services provided to  
10 personal property or animals if the personal property or animal is  
11 located in this state and the service is rendered for use in this  
12 state; for detective services under subdivision (4)(i) of section  
13 77-2701.16, in the case of a customer who is an individual, if the  
14 individual is residing in this state, or in the case of a business  
15 customer, if the principal place of the business is located in this  
16 state; and for computer software training under subdivision (4)(c)  
17 of section 77-2701.16 if the training is performed at a location  
18 that is within this state for a customer located within this state.

19 (a) The tax imposed by this section shall be collected  
20 by the retailer from the consumer. It shall constitute a part of  
21 the purchase price and until collected shall be a debt from the  
22 consumer to the retailer and shall be recoverable at law in the  
23 same manner as other debts. The tax required to be collected by the  
24 retailer from the consumer constitutes a debt owed by the retailer  
25 to this state.

1           (b) It is unlawful for any retailer to advertise, hold  
2 out, or state to the public or to any customer, directly or  
3 indirectly, that the tax or part thereof will be assumed or  
4 absorbed by the retailer, that it will not be added to the selling,  
5 renting, or leasing price of the property sold, rented, or leased,  
6 or that, if added, it or any part thereof will be refunded. The  
7 provisions of this subdivision shall not apply to a public utility.

8           (c) The tax required to be collected by the retailer from  
9 the purchaser, unless otherwise provided by statute or by rule and  
10 regulation of the Tax Commissioner, shall be displayed separately  
11 from the list price, the price advertised in the premises, the  
12 marked price, or other price on the sales check or other proof of  
13 sales, rentals, or leases.

14           (d) For the purpose of more efficiently securing the  
15 payment, collection, and accounting for the sales tax and for the  
16 convenience of the retailer in collecting the sales tax, it shall  
17 be the duty of the Tax Commissioner to provide a schedule or  
18 schedules of the amounts to be collected from the consumer or user  
19 to effectuate the computation and collection of the tax imposed  
20 by the Nebraska Revenue Act of 1967. Such schedule or schedules  
21 shall provide that the tax shall be collected from the consumer  
22 or user uniformly on sales according to brackets based on sales  
23 prices of the item or items. Retailers may compute the tax due on  
24 any transaction on an item or an invoice basis. The rounding rule  
25 provided in section 77-3,117 applies.

1           (e) The use of tokens or stamps for the purpose of  
2 collecting or enforcing the collection of the taxes imposed in the  
3 Nebraska Revenue Act of 1967 or for any other purpose in connection  
4 with such taxes is prohibited.

5           (f) For the purpose of the proper administration of the  
6 provisions of the Nebraska Revenue Act of 1967 and to prevent  
7 evasion of the retail sales tax, it shall be presumed that all  
8 gross receipts are subject to the tax until the contrary is  
9 established. The burden of proving that a sale of property is not  
10 a sale at retail is upon the person who makes the sale unless he  
11 or she takes from the purchaser (i) a resale certificate to the  
12 effect that the property is purchased for the purpose of reselling,  
13 leasing, or renting it, (ii) an exemption certificate pursuant to  
14 subsection (7) of section 77-2705, or (iii) a direct payment permit  
15 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
16 certificate, exemption certificate, or direct payment permit shall  
17 be conclusive proof for the seller that the sale was made for  
18 resale or was exempt or that the tax will be paid directly to the  
19 state.

20           (g) In the rental or lease of automobiles, trucks,  
21 trailers, semitrailers, and truck-tractors as defined in the Motor  
22 Vehicle Registration Act, the tax shall be collected by the lessor  
23 on the rental or lease price at the tax rate in effect on the date  
24 the automobile, truck, trailer, semitrailer, or truck-tractor is  
25 delivered to the lessee, except as otherwise provided within this

1 section.

2 (h) In the rental or lease of automobiles, trucks,  
3 trailers, semitrailers, and truck-tractors as defined in the act,  
4 for periods of one year or more, the lessor may elect not to  
5 collect and remit the sales tax on the gross receipts and instead  
6 pay a sales tax on the cost of such vehicle. If such election is  
7 made, it shall be made pursuant to the following conditions:

8 (i) Notice of the desire to make such election shall  
9 be filed with the Tax Commissioner and shall not become effective  
10 until the Tax Commissioner is satisfied that the taxpayer has  
11 complied with all conditions of this subsection and all rules and  
12 regulations of the Tax Commissioner;

13 (ii) Such election when made shall continue in force and  
14 effect for a period of not less than two years and thereafter until  
15 such time as the lessor elects to terminate the election;

16 (iii) When such election is made, it shall apply to all  
17 vehicles of the lessor rented or leased for periods of one year or  
18 more except vehicles to be leased to common or contract carriers  
19 who provide to the lessor a valid common or contract carrier  
20 exemption certificate. If the lessor rents or leases other vehicles  
21 for periods of less than one year, such lessor shall maintain his  
22 or her books and records and his or her accounting procedure as the  
23 Tax Commissioner prescribes; and

24 (iv) The Tax Commissioner by rule and regulation shall  
25 prescribe the contents and form of the notice of election, a

1 procedure for the determination of the tax base of vehicles which  
2 are under an existing lease at the time such election becomes  
3 effective, the method and manner for terminating such election, and  
4 such other rules and regulations as may be necessary for the proper  
5 administration of this subdivision.

6 (i) The tax imposed by this section on the sales of  
7 motor vehicles, semitrailers, and trailers as defined in sections  
8 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
9 and, with the exception of motor vehicles, semitrailers, and  
10 trailers registered pursuant to section 60-3,198, the tax shall  
11 be collected by the county treasurer or designated county official  
12 as provided in the Motor Vehicle Registration Act at the time  
13 the purchaser makes application for the registration of the motor  
14 vehicle, semitrailer, or trailer for operation upon the highways  
15 of this state. The tax imposed by this section on motor vehicles,  
16 semitrailers, and trailers registered pursuant to section 60-3,198  
17 shall be collected by the Department of Motor Vehicles at the time  
18 the purchaser makes application for the registration of the motor  
19 vehicle, semitrailer, or trailer for operation upon the highways  
20 of this state. At the time of the sale of any motor vehicle,  
21 semitrailer, or trailer, the seller shall (i) state on the sales  
22 invoice the dollar amount of the tax imposed under this section  
23 and (ii) furnish to the purchaser a certified statement of the  
24 transaction, in such form as the Tax Commissioner prescribes,  
25 setting forth as a minimum the total sales price, the allowance for

1 any trade-in, and the difference between the two. The sales tax due  
2 shall be computed on the difference between the total sales price  
3 and the allowance for any trade-in as disclosed by such certified  
4 statement. Any seller who willfully understates the amount upon  
5 which the sales tax is due shall be subject to a penalty of one  
6 thousand dollars. A copy of such certified statement shall also  
7 be furnished to the Tax Commissioner. Any seller who fails or  
8 refuses to furnish such certified statement shall be guilty of  
9 a misdemeanor and shall, upon conviction thereof, be punished by  
10 a fine of not less than twenty-five dollars nor more than one  
11 hundred dollars. If the seller fails to state on the sales invoice  
12 the dollar amount of the tax due, the purchaser shall have the  
13 right and authority to rescind any agreement for purchase and  
14 to declare the purchase null and void. If the purchaser retains  
15 such motor vehicle, semitrailer, or trailer in this state and  
16 does not register it for operation on the highways of this state  
17 within thirty days of the purchase thereof, the tax imposed by  
18 this section shall immediately thereafter be paid by the purchaser  
19 to the county treasurer, the designated county official, or the  
20 Department of Motor Vehicles. If the tax is not paid on or  
21 before the thirtieth day after its purchase, the county treasurer,  
22 designated county official, or Department of Motor Vehicles shall  
23 also collect from the purchaser interest from the thirtieth day  
24 through the date of payment and sales tax penalties as provided in  
25 the Nebraska Revenue Act of 1967. The county treasurer, designated

1 county official, or Department of Motor Vehicles shall report and  
2 remit the tax so collected to the Tax Commissioner by the fifteenth  
3 day of the following month. The county treasurer or designated  
4 county official shall deduct and withhold for the use of the county  
5 general fund, from all amounts required to be collected under  
6 this subsection, the collection fee permitted to be deducted by  
7 any retailer collecting the sales tax. The Department of Motor  
8 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
9 Division Cash Fund the collection fee permitted to be deducted by  
10 any retailer collecting the sales tax. The collection fee shall  
11 be forfeited if the county treasurer, designated county official,  
12 or Department of Motor Vehicles violates any rule or regulation  
13 pertaining to the collection of the use tax.

14 (j)(i) The tax imposed by this section on the sale of a  
15 motorboat as defined in section 37-1204 shall be the liability of  
16 the purchaser. The tax shall be collected by the county treasurer  
17 or designated county official at the time the purchaser makes  
18 application for the registration of the motorboat. At the time  
19 of the sale of a motorboat, the seller shall (A) state on the  
20 sales invoice the dollar amount of the tax imposed under this  
21 section and (B) furnish to the purchaser a certified statement of  
22 the transaction, in such form as the Tax Commissioner prescribes,  
23 setting forth as a minimum the total sales price, the allowance for  
24 any trade-in, and the difference between the two. The sales tax due  
25 shall be computed on the difference between the total sales price

1 and the allowance for any trade-in as disclosed by such certified  
2 statement. Any seller who willfully understates the amount upon  
3 which the sales tax is due shall be subject to a penalty of one  
4 thousand dollars. A copy of such certified statement shall also  
5 be furnished to the Tax Commissioner. Any seller who fails or  
6 refuses to furnish such certified statement shall be guilty of a  
7 misdemeanor and shall, upon conviction thereof, be punished by a  
8 fine of not less than twenty-five dollars nor more than one hundred  
9 dollars. If the seller fails to state on the sales invoice the  
10 dollar amount of the tax due, the purchaser shall have the right  
11 and authority to rescind any agreement for purchase and to declare  
12 the purchase null and void. If the purchaser retains such motorboat  
13 in this state and does not register it within thirty days of the  
14 purchase thereof, the tax imposed by this section shall immediately  
15 thereafter be paid by the purchaser to the county treasurer or  
16 designated county official. If the tax is not paid on or before  
17 the thirtieth day after its purchase, the county treasurer or  
18 designated county official shall also collect from the purchaser  
19 interest from the thirtieth day through the date of payment and  
20 sales tax penalties as provided in the Nebraska Revenue Act of  
21 1967. The county treasurer or designated county official shall  
22 report and remit the tax so collected to the Tax Commissioner by  
23 the fifteenth day of the following month. The county treasurer or  
24 designated county official shall deduct and withhold for the use of  
25 the county general fund, from all amounts required to be collected

1 under this subsection, the collection fee permitted to be deducted  
2 by any retailer collecting the sales tax. The collection fee shall  
3 be forfeited if the county treasurer or designated county official  
4 violates any rule or regulation pertaining to the collection of the  
5 use tax.

6 (ii) In the rental or lease of motorboats, the tax shall  
7 be collected by the lessor on the rental or lease price.

8 (k) The Tax Commissioner shall adopt and promulgate  
9 necessary rules and regulations for determining the amount subject  
10 to the taxes imposed by this section so as to insure that the  
11 full amount of any applicable tax is paid in cases in which a  
12 sale is made of which a part is subject to the taxes imposed by  
13 this section and a part of which is not so subject and a separate  
14 accounting is not practical or economical.

15 (2) A use tax is hereby imposed on the storage, use, or  
16 other consumption in this state of property purchased, leased, or  
17 rented from any retailer and on any transaction the gross receipts  
18 of which are subject to tax under subsection (1) of this section  
19 on or after June 1, 1967, for storage, use, or other consumption  
20 in this state at the rate set as provided in subsection (1) of  
21 this section on the sales price of the property or, in the case of  
22 leases or rentals, of the lease or rental prices.

23 (a) Every person storing, using, or otherwise consuming  
24 in this state property purchased from a retailer or leased or  
25 rented from another person for such purpose shall be liable for the

1 use tax at the rate in effect when his or her liability for the  
2 use tax becomes certain under the accounting basis used to maintain  
3 his or her books and records. His or her liability shall not be  
4 extinguished until the use tax has been paid to this state, except  
5 that a receipt from a retailer engaged in business in this state  
6 or from a retailer who is authorized by the Tax Commissioner, under  
7 such rules and regulations as he or she may prescribe, to collect  
8 the sales tax and who is, for the purposes of the Nebraska Revenue  
9 Act of 1967 relating to the sales tax, regarded as a retailer  
10 engaged in business in this state, which receipt is given to the  
11 purchaser pursuant to subdivision (b) of this subsection, shall be  
12 sufficient to relieve the purchaser from further liability for the  
13 tax to which the receipt refers.

14 (b) Every retailer engaged in business in this state and  
15 selling, leasing, or renting property for storage, use, or other  
16 consumption in this state shall, at the time of making any sale,  
17 collect any tax which may be due from the purchaser and shall give  
18 to the purchaser, upon request, a receipt therefor in the manner  
19 and form prescribed by the Tax Commissioner.

20 (c) The Tax Commissioner, in order to facilitate the  
21 proper administration of the use tax, may designate such person or  
22 persons as he or she may deem necessary to be use tax collectors  
23 and delegate to such persons such authority as is necessary to  
24 collect any use tax which is due and payable to the State of  
25 Nebraska. The Tax Commissioner may require of all persons so

1 designated a surety bond in favor of the State of Nebraska to  
2 insure against any misappropriation of state funds so collected.  
3 The Tax Commissioner may require any tax official, city, county, or  
4 state, to collect the use tax on behalf of the state. All persons  
5 designated to or required to collect the use tax shall account for  
6 such collections in the manner prescribed by the Tax Commissioner.  
7 Nothing in this subdivision shall be so construed as to prevent the  
8 Tax Commissioner or his or her employees from collecting any use  
9 taxes due and payable to the State of Nebraska.

10 (d) All persons designated to collect the use tax and all  
11 persons required to collect the use tax shall forward the total of  
12 such collections to the Tax Commissioner at such time and in such  
13 manner as the Tax Commissioner may prescribe. For all use taxes  
14 collected prior to October 1, 2002, such collectors of the use tax  
15 shall deduct and withhold from the amount of taxes collected two  
16 and one-half percent of the first three thousand dollars remitted  
17 each month and one-half of one percent of all amounts in excess  
18 of three thousand dollars remitted each month as reimbursement  
19 for the cost of collecting the tax. For use taxes collected on  
20 and after October 1, 2002, such collectors of the use tax shall  
21 deduct and withhold from the amount of taxes collected two and  
22 one-half percent of the first three thousand dollars remitted each  
23 month as reimbursement for the cost of collecting the tax. Any  
24 such deduction shall be forfeited to the State of Nebraska if such  
25 collector violates any rule, regulation, or directive of the Tax

1 Commissioner.

2 (e) For the purpose of the proper administration of the  
3 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
4 it shall be presumed that property sold, leased, or rented by any  
5 person for delivery in this state is sold, leased, or rented for  
6 storage, use, or other consumption in this state until the contrary  
7 is established. The burden of proving the contrary is upon the  
8 person who purchases, leases, or rents the property.

9 (f) For the purpose of the proper administration of the  
10 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
11 for the sale of property to an advertising agency which purchases  
12 the property as an agent for a disclosed or undisclosed principal,  
13 the advertising agency is and remains liable for the sales and  
14 use tax on the purchase the same as if the principal had made the  
15 purchase directly.

16 Sec. 7. Section 77-2703.01, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18 77-2703.01 (1) The determination of whether a sale or use  
19 of property or the provision of services is in this state, in a  
20 municipality that has adopted a tax under the Local Option Revenue  
21 Act, or in a county that has adopted a tax under section 13-319  
22 shall be governed by the sourcing rules in sections 77-2703.01 to  
23 77-2703.04.

24 (2) When the property or service is received by the  
25 purchaser at a business location of the retailer, the sale is

1 sourced to that business location.

2 (3) When the property or service is not received by the  
3 purchaser at a business location of the retailer, the sale is  
4 sourced to the location where receipt by the purchaser or the  
5 purchaser's donee, designated as such by the purchaser, occurs,  
6 including the location indicated by instructions for delivery to  
7 the purchaser or donee, known to the retailer.

8 (4) When subsection (2) or (3) of this section does not  
9 apply, the sale is sourced to the location indicated by an address  
10 or other information for the purchaser that is available from  
11 the business records of the retailer that are maintained in the  
12 ordinary course of the retailer's business when use of this address  
13 does not constitute bad faith.

14 (5) When subsection (2), (3), or (4) of this section does  
15 not apply, the sale is sourced to the location indicated by an  
16 address for the purchaser obtained during the consummation of the  
17 sale, including the address of a purchaser's payment instrument, if  
18 no other address is available, when use of this address does not  
19 constitute bad faith.

20 (6) When subsection (2), (3), (4), or (5) of this section  
21 does not apply, including the circumstance in which the retailer  
22 is without sufficient information to apply the rules in any such  
23 subsection, then the location will be determined by the address  
24 from which property was shipped, from which the digital good was  
25 first available for transmission by the retailer, or from which the

1 service was provided disregarding for these purposes any location  
2 that merely provided the digital transfer of the product sold.

3 (7) The lease or rental of tangible personal property,  
4 other than property identified in subsection (8) or (9) of this  
5 section, shall be sourced as follows:

6 (a) For a lease or rental that requires recurring  
7 periodic payments, the first periodic payment is sourced the same  
8 as a retail sale in accordance with the provisions of subsections  
9 (2) through (6) of this section. Periodic payments made subsequent  
10 to the first payment are sourced to the primary property location  
11 for each period covered by the payment. The primary property  
12 location shall be as indicated by an address for the property  
13 provided by the lessee that is available to the lessor from its  
14 records maintained in the ordinary course of business when use of  
15 this address does not constitute bad faith. The property location  
16 shall not be altered by intermittent use at different locations,  
17 such as use of business property that accompanies employees on  
18 business trips and service calls; and

19 (b) For a lease or rental that does not require recurring  
20 periodic payments, the payment is sourced the same as a retail sale  
21 in accordance with the provisions of subsections (2) through (6) of  
22 this section.

23 This subsection does not affect the imposition or  
24 computation of sales or use tax on leases or rentals based on a  
25 lump-sum or accelerated basis or on the acquisition of property

1 for lease.

2 (8) The lease or rental of motor vehicles, trailers,  
3 semitrailers, or aircraft that do not qualify as transportation  
4 equipment under subsection (9) of this section shall be sourced as  
5 follows:

6 (a) For a lease or rental that requires recurring  
7 periodic payments, each periodic payment is sourced to the primary  
8 property location. The primary property location shall be as  
9 indicated by an address for the property provided by the lessee  
10 that is available to the lessor from its records maintained in  
11 the ordinary course of business when use of this address does  
12 not constitute bad faith. This location shall not be altered by  
13 intermittent use at different locations; and

14 (b) For a lease or rental that does not require recurring  
15 periodic payments, the payment is sourced the same as a retail sale  
16 in accordance with the provisions of subsections (2) through (6) of  
17 this section.

18 This subsection does not affect the imposition or  
19 computation of sales or use tax on leases or rentals based on a  
20 lump-sum or accelerated basis or on the acquisition of property  
21 for lease.

22 (9) The retail sale, including lease or rental, of  
23 transportation equipment shall be sourced the same as a retail sale  
24 in accordance with subsections (2) through (6) of this section.  
25 Transportation equipment means any of the following:

1           (a) Locomotives and railcars that are utilized for the  
2 carriage of persons or property in interstate commerce;

3           (b) Trucks and truck-tractors with a gross vehicle  
4 weight rating of ten thousand one pounds or greater, trailers,  
5 semitrailers, or passenger buses that are (i) registered through  
6 the International Registration Plan and (ii) operated under  
7 authority of a carrier authorized and certificated by the United  
8 States Department of Transportation or another federal authority  
9 to engage in the carriage of persons or property in interstate  
10 commerce;

11           (c) Aircraft operated by air carriers authorized and  
12 certificated by the United States Department of Transportation or  
13 another federal authority or a foreign authority to engage in the  
14 carriage of persons or property in interstate or foreign commerce;  
15 and

16           (d) Containers designed for use on and component parts  
17 attached or secured on the items set forth in subdivisions (9) (a)  
18 through (c) of this section.

19           (10) For purposes of this section, receive and receipt  
20 mean taking possession of tangible personal property, making first  
21 use of services, or taking possession or making first use of  
22 digital goods, whichever comes first. The terms receive and receipt  
23 do not include possession by a shipping company on behalf of the  
24 purchaser. For purposes of sourcing detective services subject to  
25 tax under subdivision ~~(10)(i)~~ (10)(h) of section 77-2701.16, making

1 first use of a service shall be deemed to be at the individual's  
2 residence, in the case of a customer who is an individual, or  
3 at the principal place of business, in the case of a business  
4 customer.

5 (11) The sale, not including lease or rental, of a motor  
6 vehicle, semitrailer, or trailer as defined in the Motor Vehicle  
7 Registration Act shall be sourced to the place of registration of  
8 the motor vehicle, semitrailer, or trailer for operation upon the  
9 highways of this state.

10 (12) The sale or lease for one year or more of motorboats  
11 shall be sourced to the place of registration of the motorboat. The  
12 lease of motorboats for less than one year shall be sourced to the  
13 point of delivery.

14 Sec. 8. Section 77-2704.55, Revised Statutes Cumulative  
15 Supplement, 2006, is amended to read:

16 77-2704.55 ~~(1)~~ Sales and use taxes shall not be  
17 imposed on the amount charged for labor or services rendered in  
18 annexing property to real estate. ~~gross receipts for the labor~~  
19 ~~of a contractor as determined in subdivision (10)(e) of section~~  
20 ~~77-2701.16 purchased in connection with the following types of~~  
21 ~~construction projects:~~

22 ~~(a) The first or original construction of a new~~  
23 ~~structure, building, or unit;~~

24 ~~(b) The construction, repair, or annexation of any~~  
25 ~~structure used for the generation, transmission, or distribution of~~

1 ~~electricity.~~

2 ~~(c) The major addition, remodeling, restoration, repair,~~  
3 ~~or renovation of an existing structure or building or a unit of~~  
4 ~~an existing building that is a single construction project of any~~  
5 ~~type that costs at least fifty percent of the current value of the~~  
6 ~~existing structure or building or unit of an existing building, or~~

7 ~~(d) Commencing July 1, 2006, construction services on~~  
8 ~~dwellings designed for occupancy by one family or duplexes designed~~  
9 ~~for occupancy by two families.~~

10 ~~(2) For purposes of this section:~~

11 ~~(a) Building means any freestanding structure annexed to~~  
12 ~~land, enclosed within a roof and exterior walls, regardless of~~  
13 ~~whether enclosed on all sides.~~

14 ~~(b) Current value means the current assessed value of~~  
15 ~~the structure, building, or unit as determined in the records~~  
16 ~~of the county assessor. If the county assessor has no current~~  
17 ~~assessed value, the current value shall be the market value of~~  
18 ~~the structure, building, or unit as shown by an appraisal of the~~  
19 ~~property that has been performed by a licensed appraiser within six~~  
20 ~~months prior to commencement of the construction project.~~

21 ~~(c) Dwelling means a residential structure. Dwelling~~  
22 ~~includes an attached or detached garage. Dwelling does not include~~  
23 ~~fences, landscaping, retaining walls, storage buildings, or other~~  
24 ~~structures that are not designed for human habitation.~~

25 ~~(d) Owner-occupied residential unit means a residential~~

1 unit in a dwelling complex containing three or more units actually  
2 occupied by a natural person who is the owner of record or who has  
3 a life tenancy therein at the time the construction or repair work  
4 is performed;

5 (e) Structure means any construction composed of building  
6 materials arranged and fitted together in some way. Structure  
7 includes, but is not limited to, streets and roadways, street  
8 lighting, and sewers and waterlines; and

9 (f) Unit means a physical portion of a building  
10 designated for separate ownership, rental, or occupancy. If a unit  
11 of a building is to be renovated and the current value is known  
12 only for the building, the current value for the building shall be  
13 apportioned to the unit based on square footage of floor space.

14 (3) Construction services performed on an owner-occupied  
15 residential unit shall be subject to tax, but commencing July 1,  
16 2006, the owner shall be entitled to a refund of any sales and use  
17 taxes paid by the owner on construction services pursuant to this  
18 subsection. A taxpayer shall be entitled to a refund of any sales  
19 tax paid on the gross receipts for the labor of a contractor for  
20 any major addition, remodeling, restoration, repair, or renovation  
21 described in this section. The refund granted in this subsection  
22 shall be conditioned upon filing a claim for the refund on a form  
23 developed by the Tax Commissioner. The requirements imposed by the  
24 Tax Commissioner shall be related to ensuring that the project  
25 qualifies for the refund. Any information received pursuant to

1 the requirements of this subsection may be disclosed to any tax  
2 official in this state. Any taxpayer who provides false information  
3 on the forms required by the Tax Commissioner for purposes of this  
4 subsection shall be subject to the penalties provided in subsection  
5 ~~(8)~~ of section ~~77-2705~~.

6 ~~(4)(a)~~ Until July 1, 2007, a taxpayer may seek prior  
7 approval from the Department of Revenue that the project, if  
8 substantially completed according to designs and specifications  
9 submitted with the application to the department, meets the  
10 requirements for a major addition, remodeling, restoration, repair,  
11 or renovation under this section and the labor performed in  
12 annexing the building materials to real estate will be exempt from  
13 tax.

14 ~~(b)~~ The approval granted in this subsection shall be  
15 conditioned upon filing an application on a form developed by the  
16 Tax Commissioner with an application fee of five hundred dollars.  
17 The application fee shall be remitted to the State Treasurer for  
18 credit to the Department of Revenue Contractor Enforcement Fund.  
19 The application shall be supported by designs, specifications,  
20 contract amount, and the current value. Any requirements imposed by  
21 the Tax Commissioner shall be related to ensuring that the project  
22 qualifies for the exemption so long as the project is completed  
23 in substantial conformity with the designs and specifications  
24 submitted with the application.

25 ~~(c)~~ The Tax Commissioner shall approve or deny the

1 application within sixty business days after receiving the  
2 application. Within sixty days after the completion of the  
3 renovation, a licensed architect or engineer shall certify to the  
4 Tax Commissioner that the renovation was completed in substantial  
5 conformity with the designs and specifications submitted with the  
6 application or shall amend the original application to describe the  
7 project as actually completed.

8           (d) Any information received pursuant to the requirements  
9 of this subsection may be disclosed to any tax official in this  
10 state. Any person who provides false information on the forms or  
11 designs and specifications required by the Tax Commissioner for  
12 purposes of this subsection shall be subject to the penalties  
13 provided in subsection (8) of section 77-2705.

14           (5) The provisions of this section shall not excuse any  
15 person from the obligation to collect sales tax on retail sales of  
16 property not annexed to real estate or from the obligation to pay  
17 the sales tax or remit the use tax on tools, services, and other  
18 materials consumed that are not annexed to real estate.

19           (6) The Department of Revenue Contractor Enforcement Fund  
20 is created. Any money in the fund available for investment shall be  
21 invested by the state investment officer pursuant to the Nebraska  
22 Capital Expansion Act and the Nebraska State Funds Investment Act.

23           Sec. 9. This act becomes operative on October 1, 2007.

24           Sec. 10. Original section 77-2701.02, Reissue Revised  
25 Statutes of Nebraska, and sections 60-3,187, 77-2701.10,

LB 367 CORRECTED

LB 367 CORRECTED

1 77-2701.16, 77-2701.34, 77-2703, 77-2703.01, and 77-2704.55,

2 Revised Statutes Cumulative Supplement, 2006, are repealed.

3           Sec. 11. The following section is outright repealed:

4 Section 77-2701.45, Revised Statutes Cumulative Supplement, 2006.